

54-14-101. Title.

This chapter is known as the "Utility Facility Review Board Act."

Amended by Chapter 242, 2007 General Session

54-14-102. Legislative findings.

(1) (a) The Legislature finds that the construction of facilities by public utilities under this title is a matter of statewide concern.

(b) The construction of these facilities may affect the safety, reliability, adequacy, and efficiency of service to customers in areas within the jurisdiction of more than a single local government.

(c) Excess costs imposed by requirements of a local government for the construction of facilities may affect either the rates and charges of the public utility to customers other than customers within the jurisdiction of the local government or the financial viability of the public utility, unless the local government pays for those excess costs.

(2) The Legislature finds that it is in the public interest to establish the Utility Facility Review Board to resolve issues regarding the construction and installation of public utility facilities.

Amended by Chapter 242, 2007 General Session

54-14-103. Definitions.

As used in this chapter:

(1) "Actual excess cost" means the difference in cost between:

(a) the standard cost of a facility; and

(b) the actual cost of the facility, including any necessary right-of-way, as determined in accordance with Section 54-14-203.

(2) "Board" means the Utility Facility Review Board.

(3) "Commencement of construction of a facility" includes the project design and the ordering of materials necessary to construct the facility.

(4) "Estimated excess cost" means any material difference in estimated cost between the costs of a facility, including any necessary right-of-way, if constructed in accordance with the requirements of a local government and the standard cost of the facility.

(5) (a) "Facility" means a transmission line, a substation, a gas pipeline, a tap, a measuring device, or a treatment device.

(b) "Facility" includes a high voltage power line route as defined in Section 54-18-102.

(6) (a) "Gas pipeline" means equipment, material, and structures used to transport gas to the public utility's customers, including:

(i) pipe;

(ii) a compressor;

(iii) a pressure regulator;

(iv) a support structure; and

(v) any other equipment or structure used to transport or facilitate transportation

of gas through a pipe.

(b) "Gas pipeline" does not include a service line.

(7) "Local government":

(a) means a city or town as defined in Section 10-1-104 or a county; or

(b) may refer to one or more of the local governments in whose jurisdiction a facility is located if a facility is proposed to be located in more than one local government jurisdiction.

(8) "Pay" includes, in reference to a local government paying the actual excess cost of a facility, payment by:

(a) a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts;

(b) a special service district under Title 17D, Chapter 1, Special Service District Act; or

(c) a private entity other than the public utility pursuant to a regulation or decision of the local government.

(9) (a) "Standard cost" means the estimated cost of a facility, including any necessary right-of-way, if constructed in accordance with:

(i) the public utility's normal practices; and

(ii) zoning, subdivision, and building code regulations of a local government, including siting, setback, screening, and landscaping requirements:

(A) imposed on similar land uses in the same zone; and

(B) that do not impair the ability of the public utility to provide service to its customers in a safe, reliable, adequate, and efficient manner.

(b) With respect to a transmission line, "standard cost" is the cost of any overhead line constructed in accordance with the public utility's normal practices.

(c) With respect to a facility of a gas corporation, "standard cost" is the cost of constructing the facility in accordance with the public utility's normal practices.

(10) (a) "Substation" means a separate space within which electric supply equipment is located for the purpose of switching, regulating, transforming, or otherwise modifying the characteristics of electricity, including:

(i) electrical equipment such as transformers, circuit breakers, voltage regulating equipment, buses, switches, capacitor banks, reactors, protection and control equipment, and other related equipment;

(ii) the site at which the equipment is located, any foundations, support structures, buildings, or driveways necessary to locate, operate, and maintain the equipment at the site; and

(iii) the structure intended to restrict access to the equipment to qualified persons.

(b) "Substation" does not include a distribution pole-mounted or pad-mounted transformer that is used for the final transformation of power to the voltage level utilized by the customer.

(11) (a) "Transmission line" means an electrical line, including structures, equipment, plant, or fixtures associated with the electrical line, operated at a nominal voltage of 34,000 volts or above.

(b) "Transmission line" includes, for purposes of Title 54, Chapter 18, Siting of High Voltage Power Line Act, an electrical line as described in Subsection (11)(a)

operated at a nominal voltage of 230 kilovolts or more.

Amended by Chapter 316, 2009 General Session

54-14-104. Rules and procedures.

The board may, pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adopt rules governing proceedings under this chapter consistent with this chapter and Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 382, 2008 General Session

54-14-201. Conditions on siting of facilities by local governments -- Payment of actual excess costs.

If otherwise authorized by law, a local government may require or condition the construction of a facility in any manner if:

- (1) the requirements or conditions do not impair the ability of the public utility to provide safe, reliable, and adequate service to its customers; and
- (2) the local government pays for the actual excess cost resulting from the requirements or conditions, except:
 - (a) any actual excess costs that the public utility collects from its customers pursuant to an order, rule, or regulation of the commission; or
 - (b) any portion of the actual excess costs that the board requires to be borne by the public utility.

Enacted by Chapter 197, 1997 General Session

54-14-202. Public utility to provide standard cost and estimated excess cost.

(1) (a) A public utility shall provide the information described in Subsection (1)(b) if a local government:

- (i) is considering imposing requirements or conditions on construction of a facility that may result in an estimated excess cost and requests that the public utility provide the estimated excess cost; or
- (ii) recommends an alternative to the public utility's proposed high voltage transmission line corridor in accordance with the provisions of Title 54, Chapter 18, Siting of High Voltage Power Line Act.

(b) Subject to Subsection (1)(a), a public utility shall provide to the local government:

- (i) (A) the estimated standard cost of the facility; and
- (B) the estimated excess cost of the facility if constructed in accordance with local government requirements or conditions; and
- (ii) the estimated cost of the alternative line corridor proposed by a local government provided that all affected land use authorities agree to the alternative line corridor proposed by the local government.

(2) If a public utility does not provide the information as described in Subsection (1), the local government may:

- (a) appeal to the board; and
- (b) request that the board review the information provided by the public utility.
- (3) (a) If the board finds that the public utility has failed to provide the standard costs and estimated excess costs in accordance with the provisions of Subsection (1), the board may request additional information from the public utility.
- (b) In accordance with Subsection (3)(a), a public utility shall provide any information requested by the board within 30 days of the day that the request was made.
- (c) If a public utility fails to comply with Subsections (3)(a) and (b), the board may suspend issuing its written decision in accordance with Section 54-14-305 for 30 days after the day on which the public utility provides the information requested under Subsection (3)(a).

Amended by Chapter 316, 2009 General Session

54-14-203. Actual excess cost.

- (1) If a local government issues a permit, authorization, approval, exception, or waiver based upon its agreement to pay for the actual excess cost of a facility, the local government shall within 30 days either accept the estimate of excess cost as the actual excess cost of a facility or request the public utility to obtain competitive bids for the facility if constructed in accordance with the requirements and conditions of the local government.
- (2) If the local government requests the public utility to obtain competitive bids, the public utility shall obtain competitive bids, and the actual excess cost of the facility shall be the difference between the lowest bid acceptable to the public utility plus the public utility's contract administration and oversight expense and the standard cost of the facility.
- (3) Any dispute regarding specifications, lowest acceptable bid, or administration and oversight expense shall be resolved by the board on an expedited basis.

Enacted by Chapter 197, 1997 General Session

54-14-204. Requirements or conditions on facility considered waived if local government does not pay for actual excess cost 30 days before construction.

Any requirement or condition in any permit, authorization, approval, exception, or waiver of a local government for a facility that imposes an actual excess cost shall be considered waived if the local government does not pay the public utility for the actual excess cost, except any actual excess costs specified in Subsection 54-14-201(2)(a) or (2)(b), within 30 days before the date construction of the facility should commence in order to avoid a significant risk of impairment of safe, reliable, and adequate service to customers of the public utility.

Enacted by Chapter 197, 1997 General Session

54-14-301. Creation, purpose, and composition of board.

(1) The Utility Facility Review Board is created to resolve disputes between local governments and public utilities regarding the siting and construction of facilities as provided in this part.

(2) The board shall be composed of:

(a) the three members of the commission;

(b) an individual appointed by the governor from a list of nominees of the Utah League of Cities and Towns; and

(c) an individual appointed by the governor from a list of nominees of the Utah Association of Counties.

(3) The chair of the commission shall serve as chair of the board.

(4) Members of the commission shall serve as members of the board during their terms of office as commissioners and until their successors on the commission have been appointed and taken office.

(5) (a) Members of the board who are not commissioners:

(i) shall have four-year terms, except the initial term of the individual first appointed by the governor from nominees of the Utah Association of Counties shall be two years;

(ii) may be appointed for one succeeding term; and

(iii) may continue to serve until their successor takes office.

(b) Vacancies in the board of members who are not commissioners shall be filled for the unexpired term.

(6) Three members of the board constitute a quorum.

(7) A member of the board may be removed for cause by the governor.

(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 89, 2013 General Session

54-14-302. Staff and support for board.

The Department of Commerce and the commission shall provide any staff, services, or meeting rooms the board requires to perform its duties.

Enacted by Chapter 197, 1997 General Session

54-14-303. Actions or disputes for which board review may be sought.

(1) A local government or public utility may seek review by the board, if:

(a) a local government has imposed requirements on the construction of a facility that result in estimated excess costs without entering into an agreement with the public utility to pay for the actual excess cost, except any actual excess costs specified in Subsection 54-14-201(2)(a) or (2)(b), at least 30 days before the date construction of the facility should commence in order to avoid significant risk of impairment of safe, reliable, efficient, and adequate service to customers of the public utility;

- (b) there is a dispute regarding:
 - (i) the estimated excess cost or standard cost of a facility;
 - (ii) when construction of a facility should commence in order to avoid significant risk of impairment of safe, reliable, and adequate service to customers of the public utility;
 - (iii) whether the public utility has sought a permit, authorization, approval, exception, or waiver with respect to a facility sufficiently in advance of the date construction should commence, based upon reasonably foreseeable conditions, to allow the local government reasonable time to pay for any estimated excess cost;
 - (iv) the geographic boundaries of a proposed corridor as set forth in a notice submitted by a public utility to a local government pursuant to the provisions of Subsection 54-18-301(2)(a), provided the action is filed by the local government before the public utility files an application for a land use permit as set forth in Subsection 54-18-304(1)(a); or
 - (v) a modification proposed by a local government to a utility's proposed corridor that is identified in the public utility's notice of intent required pursuant to Subsection 54-18-301(3);
 - (c) a local government has required construction of a facility in a manner that will not permit the utility to provide service to its customers in a safe, reliable, adequate, or efficient manner;
 - (d) a local government has prohibited construction of a facility which is needed to provide safe, reliable, adequate, and efficient service to the customers of the public utility;
 - (e) a local government has not made a final decision on the public utility's application for a permit, authorization, approval, exception, or waiver with respect to a facility within 60 days of the date the public utility applied to the local government for the permit, authorization, approval, exception, or waiver;
 - (f) a facility is located or proposed to be located in more than one local government jurisdiction and the decisions of the local governments regarding the facility are inconsistent; or
 - (g) a facility is proposed to be located within a local government jurisdiction to serve customers exclusively outside the jurisdiction of the local government and there is a dispute regarding the apportionment of the actual excess cost of the facility between the local government and the public utility.
- (2) (a) If an action is filed by a local government pursuant to Subsection (1)(b)(iv) or (v) seeking a modification to a target study area or a proposed corridor, the local government shall provide written notice of the action to any potentially affected landowner, as defined in Section 54-18-102, or affected entity, as defined in Section 54-18-102.
- (b) A potentially affected landowner, as defined in Section 54-18-102, or affected entity, as defined in Section 54-18-102, shall have a right to intervene as a party in the proceeding.

Amended by Chapter 340, 2011 General Session

54-14-304. Initial hearing.

- (1) The board shall convene an initial hearing within 50 days after the date review is initiated.
- (2) At the initial hearing, the board shall:
 - (a) determine how the review will take place, including whether it will be conducted as a formal or informal adjudicative proceeding; and
 - (b) set a schedule for the review proceeding.
- (3) The board shall hold a hearing on the merits within 60 days after the initial hearing.

Amended by Chapter 89, 2013 General Session

54-14-305. Written decisions of board.

- (1) The board shall issue a written decision on the review expeditiously and, in any event, not later than 75 days following the initial hearing.
- (2) The written decision shall:
 - (a) specify whether the facility should be constructed and, if so, whether any requirements or conditions imposed by the local government may not be imposed because they impair the ability of the public utility to provide safe, reliable, and adequate service to its customers; and
 - (b) resolve any dispute regarding:
 - (i) the standard cost or estimated excess cost of the facility;
 - (ii) the date on which construction of the facility should commence in order to avoid a significant risk of impairment of safe, reliable, and adequate service to customers of the public utility;
 - (iii) whether the public utility has sought a permit, authorization, approval, exception, or waiver with respect to a facility sufficiently in advance of the date construction should commence, based upon reasonably foreseeable conditions, to allow the local government reasonable time to pay for any estimated excess cost;
 - (iv) apportionment of the actual excess cost of the facility between the local government and the public utility under Subsection 54-14-303(1)(g); or
 - (v) the proposed location and siting of a facility subject to Chapter 18, Siting of High Voltage Power Line Act, and in accordance with Section 54-14-102.
- (3) (a) Notwithstanding Subsection (6), the written decision of the board may designate the facility route for a high voltage transmission line pursuant to a dispute described under Section 54-14-304.
 - (b) The public utility is entitled to recover from its ratepayers any actual excess costs apportioned to it under Subsection (2)(b)(iv).
- (4) If the board determines that a facility that a local government has prohibited should be constructed, the written decision shall specify any general location parameters required to provide safe, reliable, adequate, and efficient service to the customers of the public utility.
- (5) The written decision shall leave to the local government any issue that does not affect the provision of safe, reliable, adequate, and efficient service to customers of the public utility or that does not involve an estimated excess cost.
- (6) With respect to local government requirements or conditions that impose an estimated excess cost but do not impair the provision of safe, reliable, and adequate

service to the customers of the public utility, the written decision shall leave each siting issue to the local government except determination of the estimated excess cost and determination of when the construction of the facility should commence.

(7) (a) In determining when the construction of the facility should commence, the board shall consider whether the public utility sought a permit, authorization, approval, exception, or waiver from the local government in a timely manner based upon reasonably foreseeable conditions.

(b) If the board determines that the public utility did not seek a permit, authorization, approval, exception, or waiver in a timely manner, the board shall allow sufficient time for the local government to pay any actual excess cost that may be imposed as a result of requirements or conditions the local government has imposed that do not impair the provision of safe, reliable, and adequate service to customers of the public utility.

(c) There is a presumption that the utility has sought a permit, authorization, approval, exception, or waiver in a timely manner if the utility has complied with:

(i) the notice and filing requirements of Chapter 18, Siting of High Voltage Power Line Act; or

(ii) the timing requirements imposed by a local government land use ordinance.

Amended by Chapter 89, 2013 General Session

54-14-306. Action required of local government following board decision.

(1) If the board decides that a facility permitted to be constructed by a local government is subject to requirements or conditions that impose an estimated excess cost but do not impair the provision of safe, reliable, and adequate service to customers of the public utility, the local government shall, within 20 days following the decision of the board, determine whether it will impose the requirement or conditions imposing an estimated excess cost or issue the permit, authorization, approval, exception, or waiver without the requirements or conditions imposing an estimated excess cost.

(2) If the board decides that a facility should be constructed that the local government has prohibited, the local government shall, within 60 days following the decision of the board, issue the permit, authorization, approval, exception, or waiver consistent with the decision of the board.

(3) The local government may impose requirements or conditions pursuant to its zoning, subdivision, or building code regulations if:

(a) the requirements or conditions do not impair safe, reliable, and adequate service to the customers of the utility; and

(b) the local government enters into an agreement with the public utility within the 20-day time limit specified by Subsection (1) or the 60-day time limit specified by Subsection (2) to pay for the actual excess cost to the public utility, except any actual excess costs specified in Subsection 54-14-201(2)(a) or (2)(b), at least 30 days before the date construction of the facility should commence.

Enacted by Chapter 197, 1997 General Session

54-14-307. Stay of board's decision pending review or appeal.

(1) A petition for review, rehearing, or reconsideration or a petition for judicial review does not stay or suspend the effectiveness of a written decision of the board.

(2) Any party seeking to stay the effectiveness of a decision of the board shall seek a stay under Section 63G-4-405.

Amended by Chapter 382, 2008 General Session

54-14-308. Judicial review in formal adjudicative proceedings.

The Court of Appeals has jurisdiction to review any decision of the board in a formal adjudicative proceeding.

Enacted by Chapter 197, 1997 General Session